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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,424	08/05/2003	Yoshimi Tsujiyama	JCLA11962	7330
23900	7590	07/28/2005	EXAMINER	
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 07/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,424

Applicant(s)

TSUJIYAMA ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 15, 2005 has been entered.

Response to Arguments

2. Applicant's arguments filed June 15, 2005 have been fully considered but they are not persuasive.

a. Applicants have amended independent claim 1 to claim the average diameter of the long elastomeric fiber and the ratio of the average diameter of the elastomeric fiber to the nonelastomeric fiber. Applicants argue that the diameter of the nonelastomeric fibers of Collier tends to be thicker than, or at least not thinner than, the elastomeric fiber. Concluding that the range of the ratio B_d/A_d in claim 1 does not overlap with that in Collier.

Applicant's remarks are noted, however, the fact that the Collier reference teaches that the elastomeric fibers may be microfibers or macrofibers is not considered by the Examiner as a exclusion to nonelastomeric fibers with an average diameter than that of the elastomeric fibers. It is the Examiner's position that Collier, IV et al. still reads on the present claims because the reference teaches that both the nonelastomeric and the elastomeric fibers of their invention are "microfibers" with an average diameter not

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greater than about 100 μm , for example, 0.5 to 50 μm . (Col. 2, lines 28-33) Therefore, the Examiner maintains her position that the presently claimed combination of diameters would have been recognized in the art of Collier, IV et al.

b. New claims 8-12 now require that the nonelastomeric fiber is also a long fiber.

The reference of SISSON (US 4,209,563) is provided herein that provides such limitation.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 8-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by SISSON (US 4,209,563).

SISSON discloses a method of forming an elastic cloth structure comprising fibers of synthetic, organic, relatively elastomeric polymer and fibers of a synthetic, organic, elongatable but relatively nonelastic polymer. (abstract) The reference teaches the use of continuous filaments. (Col. 7, lines 54-60) The reference further teaches that up to about 90% of the material may be elastomeric, with the remaining as little as 10% non-elastic. (Col. 8, lines 49-50)

Claim Rejections - 35 USC § 102/103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over COLLIER, IV et al. (US 5,260,126).

COLLIER, IV et al. discloses elastic nonwoven webs of fibers. The reference teaches that the elastic nonwoven web of fibers may be a web of meltblown fibers or spunbonded fibers. The meltblown may be microfibers. The elastic nonwoven web may also include at least one type of nonelastic fibers, for example nonelastic microfibers, which are distributed within or upon the matrix. The nonelastic fibers may be selected from the group including polyester fibers, polyolefin fibers, among others. If the nonelastic fibers are polyolefin fibers, the polyolefin fibers may be selected from, for example, polyethylene fibers or polypropylene fibers. If nonelastic fibers are present in the elastic nonwoven web, the elastic nonwoven web may generally include from about 20 percent, by weight, to about 99 percent, by weight, of fibers formed from a styrene-poly(ethylenepropylene)-styrene blend and from about 1 percent, by weight to 80 percent, by weight, of the nonelastic fibers. (Col. 5, lines 1-37) On Table 1 of the reference, some physical properties of the styrene-poly(ethylenepropylene)-styrene block copolymer used by the reference are disclosed. (Col. 7) *With regards to the average diameter of the fibers and the relation of diameters between the elastomeric and nonelastomeric fibers, it is the Examiner's interpretation that the teaching of using microfibers (of diameters of about 100 microns or less, for example, 0.5-50 microns) reads on the values claimed herein and therefore the relation of the diameters of the fibers would be expected from their teachings. (Refer to col.*

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2, lines 28-33) With regards to claim 6, it is noted that the reference teaches using their nonwoven in application such as pants, dresses, blouses, among others. (Col.1 lines 18-25)

Although COLLIER, IV et al. does not explicitly teach the claimed elongation recovery rate and separation resistance it is reasonable to presume that these properties are inherent to the elastic nonwoven web of COLLIER, IV et al. Support for said presumption is found in the use of like materials (i.e. an elastic nonwoven web made from meltblown fibers that include elastic and nonelastic fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of elongation recover rate and separation resistance would obviously have been present one the COLLIER, IV et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

7. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over COLLIER, IV et al. as applied above, and further in view of ROMANEK (US 4,446,189).

While COLLIER, IV et al. teaches the use of their nonwoven in fiber product applications, the reference is silent to laminating the nonwoven.

ROMANEK is directed to a nonwoven textile fabric laminate that comprises at least one layer of nonwoven textile fabric laminated to an elastic layer. (Abstract, Figures 5-7)

Since both references are directed to elastic web materials, the purpose disclosed by ROMANEK would have been recognized in the pertinent art of COLLIER, IV et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to laminate the elastic web of COLLIER, IV et al. to a textile fabric with the motivation of producing a high bulk textile product having elasticity or resiliency for use in

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such applications as wearing apparel to allow enhanced freedom of movement for the wearer of such apparel as disclosed by ROMANEK. (Col. 1, lines 10-16).

8. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over COLLIER, IV et al. (US 5,260,126) as applied above, and further in view of SISSON (US 4,209,563).

SISSON discloses a method of forming an elastic cloth structure comprising fibers of synthetic, organic, relatively elastomeric polymer and fibers of a synthetic, organic, elongatable but relatively nonelastic polymer. (abstract) The reference teaches the use of continuous filaments. (Col. 7, lines 54-60) The reference further teaches that up to about 90% of the material may be elastomeric, with the remaining as little as 10% non-elastic. (Col. 8, lines 49-50) It is further noted that the reference teaches that the relatively non-elastic filaments need not necessarily comprise continuous filaments, and may, for example, comprise, in whole or in part, staple or cut length fibers. (Col. 13, lines 42-46)

COLLIER discloses the claimed invention except that uses staple length non-elastic filaments instead of long nonelastomeric filaments, SISSON shows that a continuous filament (long) is an equivalent structure known in the art. Therefore, because these two materials were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute staple fibers for long filaments.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DAPONTE (US 4,803,117)

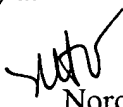
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-

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1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Norca L. Torres-Velazquez
Primary Examiner
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July 25, 2005